

REMARKS

The Examiner is thanked for the due consideration given the application. The specification has been amended to improve the language.

Claims 15-21, and 26-36 are pending in the application. Claims 15-21 have been amended to improve their language in a non-narrowing fashion. Claims 26-36 are newly presented for consideration on the merits. Support for new claims 26 and 27 can be found in the specification at page 5, lines 15-21. Support for new claims 28-36 can generally be found in the preceding claims.

No new matter is believed to be added to the application by this amendment.

The Specification

The specification is objected to as containing informalities. The specification has been amended to be free from informalities.

Claim Objections

The claims are objected to as containing informalities. The comments in the Official Action have been considered. The claims have been amended to be free from informalities.

Rejection Under 35 U.S.C. §112, Second Paragraph

Claim 21 has been rejected under 35 U.S.C. §112, second paragraph as being indefinite. This rejection is respectfully traversed.

The Official Action asserts that claim 21 lacks full antecedent basis. However, claim 21 has been amended to be clear, definite and have full antecedent basis.

This rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

Rejection Over MCCORMACK

Claims 15 and 16 have been rejected under U.S.C. §102(b) as being anticipated by MCCORMACK (U.S. Patent 5,855,999). This rejection is respectfully traversed.

The present invention pertains to clothing protective against biological agents and exhibiting a very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort. As set forth in claim 15 of the present invention, the clothing is formed from "a laminate of an inner layer of non-woven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50."

MCCORMACK pertains to a nonwoven composite. MCCORMACK fails to disclose or suggest "a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50," such as is set forth in claim 15 of the present invention.

The Official Action refers *inter alia* to column 12, line 53 to column 13, line 52 of MCCORMACK, the only passage (relied upon in the Official Action) that sets forth numerical

values from which a ratio can be derived. MCCORMACK at column 12, lines 59-60 discloses "0.5 once per square yard (17 gsm) polypropylene." This passage additionally discusses calcium carbonate blended with "15-25% by weight of linear low density polyethylene" (sentence bridging columns 12 and 13). The rest of this passage and Table 1 of MCCORMACK (to which this passage refers) set forth separate percentages of materials.

However, there is no teaching or inference in MCCORMACK of a ratio, and deriving a ratio from individual components or measurements has been found to be impermissible. See *Harries v. Air King Products Co.*, 183 F.2d 158, 86 U.S.P.Q. 57 (2d Cir. 1950).

In *Harries*, the length and width of electron streams in an electron tube were used to extrapolate a ratio, even though the specification did not once mention the ratio of the length of the electron stream to its cross section. Judge Learned Hand found: "We hold that the original specifications were for long streams, regardless of the ratio of length to cross-section, because the ratio was a later and unauthorized interpolation into the application as originally filed." 183 F.2d at 159. Judge Learned Hand additionally stated:

Even though it were possible that a person skilled in the art might see that it was not absolute length, but the ratio of length to cross-section that was important, we should not be justified in validating such an expansion of the original; it is the sort of artful extrapolation against which courts have over and over set their faces. 183 F.2d at 160.

As a result, MCCORMACK fails to disclose ratios, and it is impermissible to extract ratios from the data set forth in MCCORMACK.

MCCORMACK therefore fails to anticipate claim 15 of the present invention. Claims depending upon claim 15 are patentable over MCCORMACK for at least the above reasons.

This rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

Rejection Over BODFORD et al.

Claims 15-20 have been rejected under 35 U.S.C. §102(b) as being anticipated by, or alternatively under 35 U.S.C. §103(a) as being unpatentable over BODFORD et al. (U.S. Patent 5,589,249). This rejection is respectfully traversed.

BODFORD et al. pertain to a medical composite with a discontinuous adhesive structure. Claim 1 of BODFORD et al. recites "a vapor permeable, non-woven fabric substrate" and "at least two vapor permeable and liquid impermeable film substrates." BODFORD et al. at column 4, lines 41-51 discuss "only three substrates".

BODFORD et al. fail to disclose "a laminate of an inner layer of non-woven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50," as is set forth in independent claim 15 of the present invention.

Regarding ratio, the Official Action refers to various passages in BODFORD et al., including Example 1 and Table II. However, similar to MCCORMACK, there is no teaching or suggestion of a **ratio** between polypropylene and polyethylene in BODFORD et al., and it is improper to extract ratios from raw data. *Harries v. Air King Products Co., supra.*

BODFORD et al. accordingly fail to disclose a two layer garment suitable for protection against biological agents and combining, at the same time, a high level of protection with high comfort and softness, particularly with the claimed ratio of polymers. In contrast, it would be assumed from BODFORD et al. that there would be no way to obtain good performance from with a simpler structure, because BODFORD et al. utilize additional substrates.

BODFORD et al. thus fail to anticipate or render *prima facie* unpatentable claim 15 of the present invention. Claims depending upon claim 15 are patentable for at least the above reasons.

This rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

Rejections Under 35 U.S.C. §103(a)

Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over WU et al. (U.S. Patent 5,865,926) in view of MCCORMACK. Claims 17-20 have been rejected under 35 U.S.C. §103(a) as being unpatentable over WU et al. and

MCCORMACK, as applied above, and further in view of BODFORD et al. Claim 21 has been rejected under 35 U.S.C. §103(a) as being unpatentable over MCCORMACK in view of LANGLEY (EP 0360208). Claim 21 has been rejected under 35 U.S.C. §103(a) as being unpatentable over BODFORD et al. in view of LANGLEY. These rejections are respectfully traversed.

WU et al. pertain to a method of making a cloth-like laminate of a nonwoven fibrous web and a thermoplastic film using an extrusion coating process. The Official Action acknowledges that WU et al. fail to disclose a unit weight ratio as is set forth in claims 15 and 16 of the present invention. The Official Action then refers to MCCORMACK to address these deficiencies.

However, the inability of MCCORMACK (and similarly BODFORD et al.) to teach or infer polymer ratios has been discussed above. The additional teachings of LANGLEY fail to address these deficiencies.

As a result, a knowledge of the applied art would not induce one of ordinary skill to produce claim 15 of the present invention. A *prima facie* case of unpatentability has thus not been made. Claims depending upon claim 15 are patentable for at least the above reasons.

These rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

Conclusion

The Examiner is thanked for considering the Information Disclosure Statement filed May 13, 2005 and for making an initialed PTO-1449 Form of record in the application.

Prior art of record but not utilized is believed to be non-pertinent to the instant claims.

The objections and rejections are believed to have been overcome, obviated, or rendered moot, and that no issues remain. The Examiner is accordingly respectfully requested to place the application in condition for allowance and to issue a Notice of Allowability.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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